

AG Contract No. KR03-1545TRN
ADOT ECS File No. JPA 03-092
Project No. CM-MES-0(025)A
TRACS No. 0000 MA MES SS543 01C
Project: Smart Corridor Traffic Control
System Construction Broadway Road
From Center Street to Recker Road

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 19th April, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE CITY OF MESA acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.
5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 26779
Filed with the Secretary of State
Date Filed: 04/19/04
Janice K. Brewer
Secretary of State
By: Danny V. Greenwald

6 The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including construction administration.

7 The work embraced in this agreement is the construction of the SMART Corridor Traffic Control System along Broadway Road from Center Street to Recker Road.

The estimated costs are as follows:

Estimated Project Cost *	\$1,725,000 00
Estimated * 5% Surcharge of Construction Cost	\$ 86,250.00
Estimated Total Project Cost	\$1,811,250.00
Estimated Federal-aid funds @ 94 3% of \$1,346,766 00	\$1,270,000 00
Estimated City Funds @ 5.7% of \$1,346,766 00	\$ 76,766 00
Estimated City Funds @ 100%	\$ 464,484.00
Total City Matching Funds	\$ 541,250.00

*(Includes; construction, construction engineering administration costs)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction, the City will and does hereby designate the State as authorized agent for the City. The State hereby agrees to be authorized agent for the City, and with the aid and consent of the City and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the maximum federal funds available, including construction and administration. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur and will pay for said increased costs.

2. Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

3. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

6. Upon completion of construction, the City shall provide for, at its own costs and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands curbs and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. Upon completion of construction of the Project, the City shall provide at the time of final billing, a letter from the Project Manager or other responsible engineering official, that the work on this Project is complete and considered acceptable by the State's assigned Project Manager or other responsible engineering official and that the federal project is ready to be closed.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the, construction and administration shall be covered by this agreement to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

City Manager
City of Mesa
P.O. Box 1466
Mesa, AZ 85211-1466

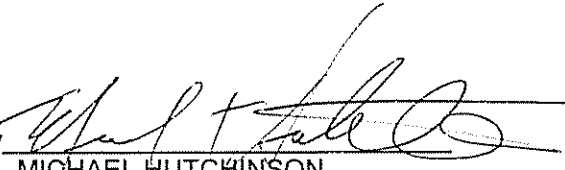
11. Attached hereto and incorporated herein are the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF MESA

STATE OF ARIZONA
Department of Transportation

By


MICHAEL HUTCHINSON
City Manager

By


DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST

By


BARBARA JONES
City Clerk



24Oct2003-apa
Revised 05Jan2004 ly

RESOLUTION NO. 8192

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE CONSTRUCTION OF THE SMART CORRIDOR TRAFFIC SYSTEM ALONG BROADWAY RD FROM CENTER STREET TO RECKER RD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA,
MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the Construction of the Smart Corridor Traffic System along Broadway Rd from Center St to Recker Rd; is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 1st day of March, 2004.

APPROVED:

Keno Hawker
Mayor

ATTEST:

Debra Jones
City Clerk



APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 3 day of March, 2004.

Debra Summer

City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR 03-1545TRN (**JPA 03-092**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 7, 2004.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED/mjf
Attachment
838536